

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR AND ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**Office of Financial and Insurance Regulation**  
**Petitioner**

**v**

**Cheri Jean Koehn**  
**Respondent**

**Enforcement Case No. 08-5576**

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**For the Petitioner:**

**Marlon F. Roberts**  
**Office of Financial & Insurance Regulation**  
**P.O. Box 30220**  
**Lansing, MI 48909-7720**

**For the Respondent:**

**James D. Murphy, Jr.**  
**24750 Lahser Road**  
**Southfield, MI 48033**

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**Issued and entered**  
**this 5<sup>th</sup> day of January 2009**  
**by Ken Ross**  
**Commissioner**

**FINAL DECISION**

On May 29, 2008, an Order Referring Complaint for Hearing and Order to Respond was issued in this case. Respondent filed her response on June 9, 2008.

On August 6, 2008, the Petitioner filed a Motion for Summary Decision and to Stay Proceeding pursuant to this agency's Hearing Rule 11, 1983 AACRS R 500.2111, asserting that there is no genuine issue as to any material fact in this case and that Petitioner is, therefore, entitled to a decision in its favor as a matter of law. Respondent filed a response dated November 21, 2008.

Hearing Rule 11 provides:

A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

(a) The commissioner lacks jurisdiction over the person or the subject matter.

(b) The opposing party has failed to state a claim upon which relief can be granted.

(c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

It is appropriate that the matter be resolved by summary decision under Rule 11 because there are no genuine issues of material fact in this case. The following facts are not in dispute:

- Respondent was convicted in United States District Court in January 1998 of the felony of filing a false and fraudulent income tax return.
- Respondent applied for a Michigan insurance producer license in May 2006 and was issued the license by the staff of the Office of Financial and Insurance Regulation ("OFIR") on June 5, 2006.

The only issue necessary to resolve in this case is whether the Respondent met the minimum licensing requirements of Section 1205(1) of the Michigan Insurance Code of 1956, ("the Code") as amended, MCL 500.1205(1). The section provides:

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

\* \* \*

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239(1)(f) of the Code states:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

\* \* \*

(f) Having been convicted of a felony.

A plain reading of these statutory provisions requires the conclusion that the Commissioner is without discretion to issue producer licenses to individuals who have been convicted of felonies. The conclusion is not based on “statutory interpretation” as Respondent asserts but on the directly expressed requirements of the law. Because Respondent has been convicted of a felony, she is not qualified to hold an insurance producer license. The question of licensure ends here; the Commissioner does not have the discretion to approve an application where an applicant has been convicted of a felony.

Granting Respondent a Michigan insurance producer license was an error on the part of OFIR staff. The license was issued in contravention of the Code provisions cited above. Issuing the license was also inconsistent with the licensing policy of OFIR as stated in prior administrative hearings. Since May 2004, when the Commissioner issued the final decision in *Mazur v Office of Financial and Insurance Services* (Case No. 03-384-L; Docket No. 2003-1515), it has been the formally stated policy of OFIR that insurance producer licenses cannot be issued to individuals with felony convictions.

When an error in licensing practices is discovered, the remedy is to correct the error and revoke the license. See *Elliott v Liquor Control Commission*, 339 Mich 78 (1954), and *Kassab v Acho*, 150 Mich App 104 (1986).

Petitioner’s motion is granted. The factual allegations and conclusions of law stated in the complaint are adopted and made part of this Final Decision.

**ORDER**

In accordance with sections 1205(1) and 1239(1) of the Michigan Insurance Code,  
Respondent's insurance producer license is revoked.

A handwritten signature in black ink, consisting of the letters 'KR' followed by a long horizontal stroke.

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Ken Ross  
Commissioner